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Conditions of service for the ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Report of the Secretary-General

I. Introduction

1. The General Assembly, in paragraph 8 of its resolution 63/259 of 24 December 2008, decided that the emoluments, pensions, and other conditions of service for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda would next be reviewed at its sixty-fifth session, including options for defined benefit and defined contribution pension schemes.

2. By a letter dated 23 October 2009, the President of the International Criminal Tribunal for Rwanda requested the Secretary-General to bring the differences in the conditions of service between the permanent judges and the ad litem judges of the International Criminal Tribunal for Rwanda to the urgent attention of the General Assembly for appropriate action or decision or both. In his letter, the President of the Tribunal noted that by resolution 1431 (2002), the Security Council had established a pool of ad litem judges in order to enable the Tribunal to expedite the conclusion of its work. At that time, it was understood that ad litem judges would serve for a limited period of time. This understanding is expressed in article 12 ter, paragraph 2, of the Tribunal's statute, which provides that ad litem judges will be appointed "to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years". The limitation on the cumulative service meant that ad litem judges would not be entitled to a pension since, according to article 1 (a) of annex III to Assembly resolution 58/264 of 23 December 2003, judges of the Tribunal are entitled to pension after serving for at least three years. By the end of 2010, when the cases of the ad litem judges will have been completed, the majority of ad litem judges will have served for more than three years. The President of the Tribunal points out that this is the consequence of a policy of giving priority to the continuity in service of the ad litem judges in order to achieve the goals of the completion strategy of the Tribunal.

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3. In his letter, the President of the Tribunal also noted that the Security Council has in various resolutions, such as 1705 (2006), 1717 (2006) and 1878 (2009), recognized the need for and allowed ad litem judges to serve beyond the cumulative period of service, in the greater interest of expediting the completion of the work of the Tribunal. The President of the Tribunal further noted that the workload of the ad litem judges is identical to that of the permanent judges and that their responsibilities are nearly identical to those of the permanent judges. Therefore, the continued differences in the terms and conditions of service between the permanent judges and ad litem judges are no longer justified and should be addressed in the interest of both equity and the successful implementation of the completion strategy of the Tribunal. In this regard, the President also pointed out that in resolution 1878 (2009), the Council had noted the concerns that were expressed about the terms and conditions of service of the ad litem judges but could not take any action because the matter falls within the purview of the General Assembly.

4. In a letter dated 22 December 2009, addressed to the Assistant Secretary-General for Human Resources Management, the President of the International Tribunal for the Former Yugoslavia noted that the ad litem judges for that Tribunal had been providing indispensable services in expediting the work of the Tribunal, including providing fair and expeditious trials to accused persons, while meeting the goals of the completion strategy. The extensions of their mandate, as approved by the Security Council in resolution 1877 (2009), has also secured the continuity of the judicial work, which is imperative for the expeditious completion of the Tribunal's mandate. The President also noted that the General Assembly's consideration of the conditions of service of the ad litem judges and, in particular, extending the pension benefit to the ad litem judges, would be consistent with the extension of their terms of service, as approved by the Council in its resolution 1877 (2009).

5. The present report is prepared in response to the above requests of the Presidents of the two Tribunals to bring to the urgent attention of the General Assembly the issue of the terms and conditions of the ad litem judges of the two Tribunals, in particular that of extending their pension benefits. It is also to be recalled that the Assembly in its resolution 64/239 of 24 December 2009 noted that the Secretary-General was conducting a review of conditions of service of ad litem judges at the International Criminal Tribunal for Rwanda and anticipated addressing the review at the first resumed session of its sixty-fourth session.

II. Appointment of ad litem judges

6. The Security Council, acting under Chapter VII of the Charter of the United Nations, by its resolution 1329 (2000) of 30 November 2000, decided to establish a pool of ad litem judges in the International Tribunal for the Former Yugoslavia and to enlarge the membership of the Appeals Chambers of both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The Council also decided to amend articles 12, 13 and 14 of the statute of the International Tribunal for the Former Yugoslavia and articles 11, 12 and 13 of the statute of the International Criminal Tribunal for Rwanda. The statute of the International Criminal Tribunal for Rwanda was not amended to include a provision for the utilization of ad litem judges.

7. By resolution 1431 (2002), the Security Council decided to establish a pool of ad litem judges in the International Criminal Tribunal for Rwanda, and also decided to amend articles 11, 12 and 13 of the statute of the International Criminal Tribunal for Rwanda and to amend articles 13 bis and 14 of the statute of the International Tribunal for the Former Yugoslavia.

8. According to article 13 ter of the statute for the International Tribunal for the Former Yugoslavia, the ad litem judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. The statute of the International Criminal Tribunal for Rwanda provides in article 12 ter that the ad litem judges will be appointed by the Secretary-General, upon request of the President of the International Criminal Tribunal for Rwanda, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years.

9. Article 13 quater (1) (a) of the statute of the International Tribunal for the Former Yugoslavia provides that during the period in which they are appointed to serve in the International Tribunal, ad litem judges shall benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the International Tribunal. According to article 12 quater (1) (a) of the statute of the International Criminal Tribunal for Rwanda, the ad litem judges shall benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the International Criminal Tribunal. Certain differences, following this principle of mutatis mutandis application, were based on the initial arrangements foreseen for ad litem judges, namely, their joining the Tribunals for one or more trials for a cumulative period of up to, but not including, three years. Three years of uninterrupted service is the minimum term for permanent judges to be eligible for pension benefits.

10. In various resolutions, the Security Council extended the term of office of the ad litem judges of both Tribunals beyond the maximum cumulative period of three years to assist the Tribunals in the implementation of their completion strategies. As a result, by the time that the Tribunals complete their trials, a number of ad litem judges will have served more than three years continuously. Since the period of service of ad litem judges will have exceeded three years, and they will have assumed the same responsibilities as the permanent judges, it is argued by both Tribunals that the ad litem judges should be entitled to the same remunerations, benefits and allowances paid to the permanent judges.

III. Background information on the pension benefits of the judges of the Tribunals

11. With regard to the pension benefits of the judges of the Tribunals, it should be recalled that the General Assembly, in section VIII, paragraph 6, of its resolution 53/214, approved the pension scheme regulations for the permanent judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, respectively. The Assembly approved a pension scheme for the judges of the Tribunals on the basis of the recommendations contained in paragraph 29 of the report of the Advisory Committee on Administrative and Budgetary Questions (A/53/7/Add.6), whereby the Advisory Committee

recommended that the pension benefit for the judges of the two Tribunals be based on that applicable to the judges of the International Court of Justice, and prorated to account for the difference in length in the terms of appointment, that is to say, nine years for the members of the Court versus four years for the judges of the two Tribunals.

12. In its report (A/55/806), the Advisory Committee on Administrative and Budgetary Questions drew attention to the fact that, unlike the situation of other judges in the Tribunals, the service of ad litem judges is of a much more temporary nature and could be intermittent. This essential difference had been taken into account in evaluating the necessity of a number of the entitlements and allowances proposed in the report of the Secretary-General. The Advisory Committee also considered the fact that, although unlikely, circumstances could lead to a trial lasting long enough so that the service of an ad litem judge would exceed three years. To cover that eventuality, the letter of appointment should contain a proviso that, notwithstanding such a development, the consequential extension of service would not give rise to any additional entitlements or benefits other than those that already exist and that would be extended prorata by virtue of the extension of service (para. 14 of A/55/806). The report was endorsed by the General Assembly in its resolution 55/249, which concerns ad litem judges of the International Tribunal for the Former Yugoslavia and also extends to the International Criminal Tribunal for Rwanda.

13. On the occasion of the comprehensive reviews of the conditions of service and the pension benefits of the judges undertaken in 2001 and 2006, the Secretary-General shared the concerns, as expressed by the two Tribunals, that the existing disparity between the pension benefits of the judges of the Tribunals and of the judges of the International Court of Justice results in discrimination against the judges of the Tribunals not warranted either by the statute of the International Tribunal for the Former Yugoslavia or by that of the International Criminal Tribunal for Rwanda. As the General Assembly is the sole authority for determining the conditions of service and the pension benefits of the judges of the Tribunals and of the judges of the Court, the matter was brought once again to the attention of the Assembly for its consideration, in the light of the arguments and proposals put forward by the President and the Registrar of the International Tribunal for the Former Yugoslavia and the President and Registrar of the International Criminal Tribunal for Rwanda on the occasion of the review undertaken at the sixty-first session.

14. In paragraph 10 of its resolution 61/262, the General Assembly decided to maintain, as an interim measure, the retirement benefits of the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda at the level resulting from the annual base salary decided in section III of its resolution 59/282 and requested the Secretary-General to revise article 1, paragraph 2, of the Pension Scheme Regulations accordingly.

15. In paragraph 11 of resolution 61/262, the General Assembly requested the Secretary-General to submit a report at its sixty-second session on options for designing pension schemes for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, including defined-benefit and defined-

contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office.

16. In paragraph 27 of his report A/62/538/Add.2 and Corr.1, the Secretary-General proposed the following vis-à-vis the pension benefits for the judges of the Tribunals:

(a) The pension scheme for the judges of the International Tribunal for the Former Yugoslavia and the judges of the International Criminal Tribunal for Rwanda should, respectively, remain a defined-benefit scheme;

(b) The pension schemes should remain non-contributory;

(c) The retirement benefit of the judges of the Tribunals should continue to be correlated to salaries, as are judicial and other pensions, and should be defined as being equal to 55 per cent of the annual net base salary (excluding post adjustment), assuming completion of a period of service of nine years;

(d) The level of pension should be determined by reference to years of service rather than a term of office;

(e) A judge of the International Tribunal for the Former Yugoslavia or of the International Criminal Tribunal for Rwanda who has or will be re-elected or extended for any subsequent term will receive a retirement benefit for each further month of service, by reference to the proportion of annual pension that the number of months of his or her service bears to 108 months;

(f) A judge of the International Tribunal for the Former Yugoslavia or of the International Criminal Tribunal for Rwanda who has been or will be re-elected should receive one three-hundredth of his or her retirement benefit for each further month of service, up to a maximum pension of three fourths of annual net base salary (excluding post adjustment);

(g) The retirement age should remain at 60 years of age;

(h) The actuarial reduction factor, at a rate of 0.5 per cent per month, should continue to be applied in the case of early retirement prior to age 60;

(i) The level of the retirement benefit should be adjusted on the occasion of increases in the annual net base salary of the judges of the Tribunals;

(j) Pensions in payment should also be adjusted on the occasion of increases in the annual net base salary of the judges of the Tribunals.

17. In paragraph 16 of its report A/63/570, the Advisory Committee on Administrative and Budgetary Questions recommended approval of the Secretary-General's proposal as follows: (a), (b), (d), (e), (f), (g), (h), (i) and (j) above. In paragraph 17 of its report, the Advisory Committee indicated that, in line with its recommendations on the International Court of Justice (as contained in paras. 12 and 13 of its report), the retirement benefit of the judges of the International Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda should continue to be based on salaries and should be 50 per cent of the annual net base salary (excluding post adjustment) or $85,040, whichever amount is higher by reference to nine years of service. The Advisory Committee also recommended that a judge of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda who has been or will be re-elected should receive one

three-hundredth of his or her retirement benefit for each further month of service beyond nine years, up to a maximum pension of two thirds of annual net base salary (excluding post adjustment).

18. In paragraphs 3 and 5 of section I of its resolution 63/259 of 24 December 2008, the General Assembly endorsed the conclusions and recommendations of the Advisory Committee and requested the Secretary-General to make the necessary revisions to the Pension Scheme Regulations for the judges of the Tribunals. The Assembly, in paragraph 3 of section II of its resolution 63/259, also decided to amend the Pension Scheme Regulations of the judges of the Tribunals so as to ensure that no former judge of any of these courts received a pension while also serving as a judge of the International Criminal Court.

IV. Financial implications

19. Should the General Assembly decide to extend the pension scheme currently applicable to the permanent judges of the two Tribunals (as described in paras. 15-17 above) to the ad litem judges with more that three years of continuous service, the related budgetary implications are estimated at $421,300 for the International Criminal Tribunal for Rwanda and $306,000 for the International Tribunal for the Former Yugoslavia annually, based on the current terms of service of the ad litem judges. The additional requirements for the biennium 2010-2011 will be subject to the actual dates of completion of their terms of service, and the actual expenditures would be addressed in the context of the relevant performance reports for the biennium.

V. Conclusion

20. The conditions of service applicable to the judges of the Tribunals are set and approved by the General Assembly. The Assembly may wish to decide to extend the Pension Scheme of the permanent judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to the ad litem judges, given the fact that a number of them will have more than three years of continuous service as at 31 December 2010 and will be performing similar functions.

21. The General Assembly, pursuant to its request in resolution 63/259, will be presented at its sixty-fifth session with a comprehensive report on the emoluments, pensions, and other conditions of service for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.